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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Chapter 11

SEARS HOLDING CORPORATION, *et al.*,¹

Case No. 18-23538 (RDD)

Debtors.

(Jointly Administered)

**SUPPLEMENTAL CURE COSTS OBJECTION OF MANCO
FLORIDA ASSOCIATES, LLC IN RESPONSE TO NOTICE OF
ASSUMPTION AND ASSIGNMENT OF ADDITIONAL DESIGNATABLE LEASES**

Manco Florida Associates, LLC (“Landlord”), by and through the undersigned counsel and pursuant to Section 365(b) of title 11, United States Code (the “Bankruptcy Code”), and in accordance with the Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith and (IV) Granting Related Relief (ECF No. 2507) (the “Sale Order”) and Order (I) Authorizing Assumption and Assignment of Certain Executory Contracts and Leases and (II) Granting Related Relief (ECF

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

No. 3008) (the “Assumption and Assignment Order”), hereby objects to the Notice of Assumption and Assignment of Additional Designatable Leases (ECF No. 3298) (the “Notice of Assumption”) filed by Transform Holdco LLC (the “Buyer”).

1. On October 15, 2018 (the “Petition Date”), Sears Holding Corporation and certain affiliates set forth above, including Kmart Corporation (collectively, the “Debtors”), filed their voluntary petitions under Chapter 11 of the Bankruptcy Code.

2. On the Petition Date, Landlord, as landlord and successor in interest to S.S. Kresge Company, and Kmart Corporation (“Debtor-Tenant”), as tenant, were parties to that certain Lease dated as of November 10, 1975 (as amended from time to time, including all subleases relating thereto, the “Lease”). The Lease details the obligations of the parties with respect to the premises generally described as Kmart Store No. 7067 located in Fort Myers, Florida.

3. On January 29, 2019, in response to the Debtors’ Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (ECF No. 1774) (the “Supplemental Notice”), Landlord timely filed its Objection (ECF No. 2128) to: (I) correct the misnomer of Landlord (incorrectly identified as “David & Nathan Mandelbaum”), (II) provide the accurate cure claim of \$72,453.19 as of February 1, 2019, and (III) determine entitlement to attorneys’ fees and costs (ECF. No. 2128) (the “Cure Costs Objection”).

4. In addition, on April 4, 2019, Landlord timely filed Proof of Claim No. 13926 detailing that the sum of \$137,024.52 as due and owing to Landlord as of April 1, 2019 (the “Landlord Claim”).

5. On April 19, 2019, the Buyer filed the Notice of Assumption carrying forward the same defects as the Supplemental Notice – the misnomer of Landlord and incorrect cure costs – without accounting for the Cure Costs Objection and Landlord Claim. Specifically, the Notice of Assumption indicates that no cure claim has been asserted and provides the same incorrect cure amount of \$41,147.72 asserted by the Debtor-Tenant in the Supplemental Notice.

6. Section 365(b)(1) of the Bankruptcy Code provides, in relevant part, that “[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee – (A) cures, or provides adequate assurance that the trustee will promptly cure, such default...” Section 365(d)(3) similarly requires a debtor in possession to “timely perform all the obligations of the debtor... arising from and after the order for relief under any unexpired lease of non-residential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.” The payment of attorney fees under Section 365(d)(3) is required when the lease at issue provides for such recovery as an obligation of the Debtor. *In re Ames Dept. Stores, Inc.*, 306 B.R. 43, 81 (Bankr. S.D.N.Y. 2004); *citing In re Westview 74th St. Drug Corp.*, 59 B.R. 747, 756-57 (Bankr. S.D.N.Y. 1986) (Because lease provided for recovery of attorneys’ fees and interest in an action to enforce the lease, their receipt deserved the same priority under Section 365(d)(3) as any of the Debtor’s other obligations that arise post-petition).

7. The Debtor-Tenant has been in default under the terms of the Lease for failing to timely pay the sales taxes, real estate taxes and common area maintenance due and owing under the terms of the Lease. The Lease additionally provides for recovery of reasonable attorneys’ fees and costs incurred in connection with Debtor-Tenant’s failure to comply with certain Lease terms. This Supplemental Cure Objection therefore seeks to: (a) correct the misnomer of

Landlord; and (b) provide the accurate cure claim of **\$129,014.94** as of April 23, 2019 plus attorneys' fees and costs incurred in connection with this dispute in an amount to be determined once this Supplemental Cure Objection is resolved (estimated to be no less than \$5,000). A true and correct copy of the Statement of Cure Costs as of April 23, 2019 is attached hereto as Exhibit "A." To assume and assign the Lease, the Buyer or Debtor-Tenant must cure the above referenced defaults.

8. Landlord joins objections filed by Debtors' other landlords to the Notice of Assumption to the extent that such objections are not inconsistent with this Supplemental Cure Objection. Landlord expressly reserves the right to supplement and amend this Supplemental Cure Objection including, without limitation, to update post-petition amounts due and owing under the Lease and attorneys' fees and costs relating to the enforcement of same.

Dated: April 29, 2019

/s/ Ryan C. Reinert

RYAN C. REINERT

Florida Bar No. 81989

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*Attorneys for Manco Florida Associates,
LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been provided on April 29, 2019 via transmission of Notice of Electronic Filing generated by CM/ECF on all parties of record, and on parties on the attached Service List as indicated.

/s/ Ryan C. Reinert
Attorney

SERVICE LIST

VIA EMAIL

I. Bid Notice Parties

a. Debtors

Rob Riecker: rob.riecker@searshc.com
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c. Debtors' investment banker:

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II. Buyer Parties

a. Buyer

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VIA FIRST CLASS MAIL

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New York, NY 10006

KMart Corporation, Store #7067

MANCO - Ft Meyers, FL (as of 4.23.19)

Sears Holding Corporation
3333 Beverly Road, Loc BC-131A
Hoffman Estates, IL 60179

Date	Description	
08/27/18	July 2018 CAM	804.04
08/27/18	July 2018 CAM-taxable	1,653.69
08/27/18	5.8% Sales Tax 7/18	95.91
09/24/18	Aug 2018 CAM	802.32
09/24/18	Aug 2018 CAM-taxable	1,227.62
09/24/18	5.8% Sales Tax 8/18	71.20
09/30/18	Sept'18 CAM (Pre-petition)	851.88
09/30/18	Sept'18 CAM-tx (Pre-petition)	10,877.26
09/30/18	5.8% Sales Tax 9/18 (Pre-petition)	630.88
10/14/18	R/E Tax 1/1-10/14 (Pre-petition)	37,207.21
10/14/18	5.8% Sales Tax RET (Pre-petition)	2,158.02
10/14/18	Oct 1-14 CAM (Pre-petition)	438.63
10/14/18	Oct 1-14 CAM-tx (Pre-petition)	493.15
10/14/18	5.8% Sales Tax 10/18 (Pre-petition)	28.60
10/14/18	10/5-10/14 CAM (Pre-petition)	24.77
10/14/18	Add'l '18 CAM-tx (Pre-petition)	1,668.30
10/14/18	5.8% Sales Tax (Pre-petition)	96.76
12/18/18	Nov'18 CAM Post-petition	816.49
12/18/18	Nov'18 CAM-tx Post-petition	1,896.46
12/18/18	5.8% Sales Tx 11/18 Post-petition	110.00
01/29/19	Dec'18 CAM Post-petition	848.01
01/29/19	Dec'18 CAM-tx Post-petition	1,545.03
01/29/19	5.8% Sales tax 12/18	89.61
02/27/19	Add'l Dec CAM-taxable	19,994.94
02/27/19	5.8% Sales Tax 12/18	1,159.71
02/28/19	Jan 2019 CAM	958.37
02/28/19	Jan 2019 CAM-taxable	35,041.21
02/28/19	6.2% Sales Tax 1/19	2,172.55
03/21/19	Feb 2019 CAM	984.16
03/21/19	Feb 2019 CAM-taxable	1,673.95
03/21/19	6.2% Sales Tax 2/19 CAM	103.79
04/22/19	March 2019 CAM	947.39
04/22/19	March 2019 CAM - taxable	1,452.95
04/22/19	6.2% Sales Tax 3/19 CAM	90.08

Total	129,014.94
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Total Pre-petition charges	59,130.24
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Total Post-petition charges	69,884.70
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Total Charges	129,014.94
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EXHIBIT "A"

KMart Corporation, Store #7067
MANCO - Ft Meyers, FL (as of 4.23.19)

Post-petition Charges

12/18/18	Nov'18 CAM Post-petition	816.49
12/18/18	Nov'18 CAM-tx Post-petition	1,896.46
01/29/19	Dec'18 CAM Post-petition	848.01
01/29/19	Dec'18 CAM-tx Post-petition	1,545.03
02/27/19	Add'l Dec CAM-taxable	19,994.94
02/28/19	Jan 2019 CAM	958.37
02/28/19	Jan 2019 CAM-taxable	35,041.21
03/21/19	Feb 2019 CAM	984.16
03/21/19	Feb 2019 CAM-taxable	1,673.95
04/22/19	March 2019 CAM	947.39
04/22/19	March 2019 CAM - taxable	1,452.95
04/22/19	6.2% Sales Tax 3/19 CAM	90.08
Total CAM (Post-petition)		66,249.04

12/18/18	5.8% Sales Tx 11/18 Post-petition	110.00
01/29/19	5.8% Sales tax 12/18	89.61
02/27/19	5.8% Sales Tax 12/18	1,159.71
02/28/19	6.2% Sales Tax 1/19	2,172.55
03/21/19	6.2% Sales Tax 2/19 CAM	103.79
Total Sales Tax (Post-petition)		3,635.66

Total Post-Petition Charges	69,884.70
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KMart Corporation, Store #7067
MANCO - Ft Meyers, FL (as of 4.23.19)

Pre-petition Charges

08/27/18	July 2018 CAM	804.04
08/27/18	July 2018 CAM-taxable	1,653.69
09/24/18	Aug 2018 CAM	802.32
09/24/18	Aug 2018 CAM-taxable	1,227.62
09/30/18	Sept'18 CAM (Pre-petition)	851.88
09/30/18	Sept'18 CAM-tx (Pre-petition)	10,877.26
10/14/18	Oct 1-14 CAM (Pre-petition)	438.63
10/14/18	Oct 1-14 CAM-tx (Pre-petition)	493.15
10/14/18	10/5-10/14 CAM (Pre-petition)	24.77
10/14/18	Add'l '18 CAM-tx (Pre-petition)	1,668.30
	Total CAM (pre-petition)	18,841.66

10/14/18	R/E Tax 1/1-10/14 (Pre-petition)	37,207.21
	Total RET (pre-petition)	37,207.21

08/27/18	5.8% Sales Tax 7/18	95.91
09/24/18	5.8% Sales Tax 8/18	71.20
09/30/18	5.8% Sales Tax 9/18 (Pre-petition)	630.88
10/14/18	5.8% Sales Tax RET (Pre-petition)	2,158.02
10/14/18	5.8% Sales Tax 10/18 (Pre-petition)	28.60
10/14/18	5.8% Sales Tax (Pre-petition)	96.76
	Total Sales Tax (pre-petition)	3,081.37

Total Pre-Petition Charges	59,130.24
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